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Attorneys for Defendants  
MP3TUNES, LLC and  
MICHAEL ROBERTSON

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, INC.; CAROLINE  
RECORDS, INC.; EMI CHRISTIAN MUSIC  
GROUP INC.; PRIORITY RECORDS LLC;  
VIRGIN RECORDS AMERICA, INC.;  
BEECHWOOD MUSIC CORP.; COLGEMS-  
EMI MUSIC INC.; EMI APRIL MUSIC INC;  
EMI BLACKWOOD MUSIC; EMI FULL  
KEEL MUSIC; EMI GOLDEN TORCH  
MUSIC CORP; EMI LONGITUDE MUSIC;  
EMI VIRGIN MUSIC, INC.; EMI VIRGIN  
SONGS, INC.,

Plaintiffs,

v.

MP3TUNES, LLC AND MICHAEL  
ROBERTSON

Defendants.

No. 07 Civ. 9931 (WHP)

DECLARATION OF MICHAEL  
ROBERTSON IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS,  
OR IN THE ALTERNATIVE, TO  
TRANSFER TO THE SOUTHERN  
DISTRICT OF CALIFORNIA

I, Michael Robertson, declare:

1. I am Chief Executive Officer of MP3tunes, LLC ("MP3tunes"). I have personal knowledge of the matters stated herein, and if called as a witness, I could and would testify competently to them.

2. I submit this declaration in support of Defendants' Motion to Dismiss or in the Alternative, to Transfer to the Southern District of California.

3. I am and have been a resident of San Diego, California since 1985. I do not own any property in New York. I do not transact business on behalf of MP3tunes in New York, either personally or through any agent.

4. MP3tunes is a Delaware corporation, with its sole place of business at 5960 Cornerstone Court West, Suite 100, San Diego, California 92121.

5. MP3tunes is not authorized to transact business in any other state. MP3tunes has no bank accounts or property in New York, has no phone listing in New York, has no agents in New York, does not use any individuals or companies in New York to promote its interests, has never solicited business in New York, and has no contracts anywhere to supply goods or services in New York.

6. MP3tunes is a small start-up company with only 15 employees.

7. All of MP3tunes' employees work at its sole place of business in San Diego, California and reside in San Diego County. All of MP3tunes' officers and owners also reside in California.

8. All of the MP3tunes' servers and business records are located at its place of business in San Diego, California.

9. MP3tunes offers a variety of services through its websites [www.sideload.com](http://www.sideload.com) and [www.mp3tunes.com](http://www.mp3tunes.com). For example, on the [www.mp3tunes.com](http://www.mp3tunes.com) website ("mp3tunes.com"), MP3tunes sells digital music files, commonly known as "mp3" files through the MP3tunes Store located on the Internet at <http://store.mp3tunes.com/store.php>.

10. MP3tunes also offers personal online storage called "lockers." The service allows users to store music files they designate from their music collection. This includes music files purchased from online retailers such as Amazon, iTunes and many others. Users must use their unique user name and password to access their locker. Music files cannot be transferred or shared directly between lockers. Mp3tunes.com offers technical and account support via email. Mp3tunes.com also offers a free open forum where users can post messages.

11. MP3tunes users can utilize a software program called "LockerSync" to load music into their storage locker. This requires their unique user name and password.

12. MP3tunes' www.sideload.com website ("sideload.com") provides a search engine for free music downloads available on third-party websites. No files are stored on sideload.com or transmitted to users from sideload.com. This search engine is populated solely by MP3tunes users.

13. Free and legal music downloads are available on the Internet from a variety of sources, including promotional music offered for free through music magazines such as Spin and Filter and other popular online sources such as Salon.com and MTV.com.

14. Free promotional downloads are also available on the websites associated with music events such as South by Southwest.

15. Additionally, many record labels offer free music downloads on their website or others.

16. MP3tunes user agreements state that they are governed by California law and that the forum for any controversy, claim or dispute relating to the agreement shall be tried solely before a court located in San Diego County. A true and correct copy of the user agreement is attached hereto as Exhibit A.

17. MP3tunes received a September 4, 2007 cease and desist letter from "EMI Music Group North America" with an enclosed CD-ROM which contained a spreadsheet listing approximately 350 song titles with artist name and a URL for websites that EMI claimed

infringed its copyrights. A true and correct copy of the September 4, 2007 letter and spreadsheet from the CD-ROM enclosed with that letter is attached hereto as Exhibit B.

18. Numerous URLs listed in the September 4, 2007 letter clearly were not infringing as they were from well known and reputable organizations such as *Filter*, *Spin*, and *Paste Store*.

19. However, relying on EMI's notice, MP3tunes promptly removed all of the URLs listed in the September 4, 2007 letter. Thereafter, on behalf of MP3tunes, I contacted counsel for EMI to confirm that the URLs had been removed and suggested that EMI and MP3tunes work on a plan to protect its copyrights. EMI's counsel made it clear that EMI expected a substantial monetary payment in order to resolve any dispute.

20. On or about September 13, 2007, MP3tunes, through its counsel, responded to the September 4, 2007 take down notice. The letter enumerated deficiencies in the take down notice and material misrepresentations relating to non-infringing URLs. The letter also stated if EMI complied with its obligations under the DMCA by providing a list of tracks to which EMI owned the copyright, information reasonably sufficient to permit MP3tunes to locate the material, and accurately represent that the listed tracks are not legally available for downloading, that MP3tunes would disable the songs from its website. A true and correct copy of the September 13, 2007 letter is attached hereto as Exhibit C.

21. MP3tunes received a September 18, 2007 letter from EMI's counsel rejecting MP3tunes' request for compliance under DMCA, and insisting that any meaningful settlement proposal must "redress past infringements" (apparently referring to its prior insistence on a large monetary sum). A true and correct copy of this letter is attached hereto as Exhibit D.

22. The September 18, 2007 EMI letter also accused MP3tunes' counsel of having an actual conflict of interest in the matter as representing an EMI affiliate, Caroline Records.


23. Rather than exhaust its limited resources defending EMI's conflict of interest challenge to its current counsel, MP3tunes decided to change counsel.

24. MP3tunes retained new counsel, Duane Morris LLP, to represent MP3tunes in this matter.

21. MP3tunes received a September 18, 2007 letter from EMI's counsel rejecting MP3tunes' request for compliance under DMCA, and insisting that any meaningful settlement proposal must "redress past infringements" (apparently referring to its prior insistence on a large monetary sum). A true and correct copy of this letter is attached hereto as Exhibit D.
22. The September 18, 2007 EMI letter also accused MP3tunes' counsel of having an actual conflict of interest in the matter as representing an EMI affiliate, Caroline Records.
23. Rather than exhaust its limited resources defending EMI's conflict of interest challenge to its current counsel, MP3tunes decided to change counsel.
24. MP3tunes retained new counsel, Duane Morris LLP, to represent MP3tunes in this matter.
25. MP3tunes later received two October 25, 2007 cease and desist letters: one from "EMI Music Group North America" and one from "EMI Entertainment World." True and correct copies of these letters are attached hereto as Exhibit E.
26. Despite the apparent deficiencies and misrepresentations in these letters, MP3tunes promptly disabled all the songs listed in both letters and notified EMI of the removal.
27. Revenue from sales of online storage lockers from users believed to have New York addresses is limited to only 5% of total sales and only 6% of total locker sales.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22d day of February, 2008 at San Diego, California.

  
Michael Robertson





YOUR MUSIC  
EVERYWHERE

LOGIN EMAIL

PASSWORD

MP3tunes

[LOCKER](#) [SCREENSHOTS](#) [DOWNLOADS](#) [ABOUT](#) [PARTNERS](#) [DEVELOPERS](#)

## MP3TUNES TERMS OF USE

PLEASE READ THIS TERMS OF USE AGREEMENT CAREFULLY BEFORE USING THIS SITE. MP3TUNES, LLC ("MP3tunes," "we," "us") provides this web site and all site-related services (collectively, the "Site") subject to your compliance with the terms and conditions set forth in this agreement (the "Agreement"). This Agreement governs the relationship between MP3tunes and you, the Site visitor and/or subscriber ("you") with respect to your use of the Site. It is important that you read carefully and understand the terms and conditions of this Agreement. BY USING THE SITE, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT USE THE SITE.

AMC Technology

We reserve the right at any time at our sole discretion to:

- Change, modify, add or remove the terms and conditions of this Agreement;
- Change the Site, including eliminating or discontinuing any content on or feature of the Site; or
- Change any fees or charges for use of the Site.

Any changes we make will be effective immediately upon posting a revised version of this Agreement on the Site. Your continued use of the Site following such changes will be deemed acceptance of such changes. Be sure to return to this page periodically to ensure familiarity with the most current version of this Agreement. Upon our request, you agree to sign a non-electronic version of this Agreement.

**Materials.** All text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, music (other than music or content uploaded by You or at Your request), artwork and computer code (collectively, "Materials"), including but not limited to the design, expression, structure, "look and feel" and arrangement of the Materials, contained on the Site is owned, controlled or licensed by or to MP3tunes, and is protected by trade dress, copyright, patent and trademark laws, and various other intellectual property rights and unfair competition laws. Except as expressly provided in this Agreement, no part of the Site and no Materials may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or distributed in any way (including "mirroring") to any other computer, server, Web site or other medium for publication or distribution or for any commercial enterprise, without MP3tunes's express prior written consent. Unless otherwise specified on the Site, you may download Materials displayed on the Site, and may use the downloaded Materials, solely for your personal, non-commercial informational purpose but you may not copy or post the Materials on any networked computer or broadcast it in any media. You must retain all copyright and other proprietary notices on downloaded and copied Materials, and any such downloads or copies are subject to the terms and conditions of this Agreement. Use or downloading of the Materials is conditioned on acceptance of the terms and conditions of any license agreements relating to the Materials, including agreements of third parties. By acquiring or using the Materials, you agree to such terms and conditions. You may not download, copy or use any of the Materials except as expressly authorized by this Agreement and, in any event, you may not distribute, modify, transmit or publicly display the Materials without the written consent of MP3tunes or, if so indicated in writing by MP3tunes, its licensors or suppliers. You acknowledge that you do not acquire any ownership rights by using the Site or the Materials.

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You acknowledge that by uploading music or any other content to the Site, or requesting that music or any content be uploaded to your account maintained on the Site, that You are directing MP3tunes to store the file in the format in which it is uploaded and to convert and store it in the MP3 format, or such other format in which it may be converted by MP3tunes. You agree that you will not upload

music and content, and will not request that any music or content be uploaded to your account maintained on the Site, that infringes the copyright or other intellectual property rights of any third party.

**Registration.** Some areas of the Site may require you to be or become a MP3tunes subscriber. When and if you register to become a subscriber, you agree to (a) provide accurate, current and complete information about yourself as prompted by our registration form (including your email address) and (b) maintain and update your information (including your email address) to keep it accurate, current and complete. You acknowledge that, if any information provided by you is untrue, inaccurate, not current, invalid, or incomplete, we reserve the right to terminate this Agreement and your use of the Site.

As part of the registration process, you will be asked to enter your email address and select a password. We may refuse to grant you an account unless an email address that impersonates someone else, is or may be illegal, is or may be protected by trademark or other proprietary rights law, is vulgar or otherwise offensive, or may cause confusion, as determined by us in our sole discretion. You will be responsible for the confidentiality and use of your email address and password and you agree not to provide, disclose, transfer or reuse your email address and password or use of or access to the Site to any third party. If you have reason to believe that your account with us is no longer secure, you must promptly change your password by visiting <http://www.mp3tunes.com/forgetpassword.php> and immediately notify us of the problem by contacting us at [help@mp3tunes.com](mailto:help@mp3tunes.com). You are entirely responsible for maintaining the confidentiality of your email address and password and for any and all activities that ARE CONDUCTED through your account.

**Code of Conduct.** While using the Site and/or Materials, you agree not to:

- Restrict or inhibit the proper working of the Site or any other visitor or subscriber from using the Site, including, without limitation, by means of "hacking" or defacing any portion of the Site;
- Use the Site or Materials for any unlawful purpose or any purpose prohibited under this Agreement, or to solicit the performance of any illegal activity;
- Express or imply that any statements you make are endorsed by us, without our prior written consent;
- Transmit (a) any content or information that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable, or infringes our or any third party's intellectual property or other rights; (b) any material, non-public information about companies without the authorization to do so; (c) any trade secret of any third party; or (d) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or other unsolicited commercial communication (except as otherwise expressly permitted by us);
- Engage in spamming or flooding or taking any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Site;
- Transmit any software or other materials that contain any viruses, worms, trojan horses, defects, data bombs, time bombs or other forms of a destructive nature;
- Modify, adapt, sub-license, translate, sell, reverse engineer, decompile or disassemble any portion of the Site;
- Remove any copyright, trademark or other proprietary rights notices contained in the Site or Materials;
- "Frame" or "mirror" any part of the Site without our prior written authorization;

While using the Site and/or Materials, you agree to comply with all applicable laws, rules and regulations.

**Making Purchases.** If you wish to purchase products or services described on the Site, you will be asked by MP3tunes or the third party provider of the product or service to supply certain information applicable to your purchase, including, without limitation, credit card and other information. You understand that any such information will be treated by MP3tunes in the manner described in our Privacy Policy, which can be found at [http://www.mp3tunes.com/privacy\\_policy](http://www.mp3tunes.com/privacy_policy). MP3tunes' Privacy Policy applies to use of this Site, and its terms are made a part of this Agreement by this reference. Additionally, by using the Site, you acknowledge and agree that Internet transmissions are never completely private or secure. You understand that any message or information you send to the Site may be read or intercepted by others, even if there is a special notice that a particular transmission (for example, credit card information) is encrypted. You agree that all information that you provide to MP3tunes or such third party provider will be accurate, current and complete. You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the price(s) in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases.

Verification of information applicable to a purchase may be required prior to MP3tunes' acceptance of any order. Price and availability of any product or service are subject to change without notice. Current rates for any product or service available through the Site may be obtained by contacting our Customer Support Department at [help@mp3tunes.com](mailto:help@mp3tunes.com).



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**Forums.** We may make Forums available. Information on such Forums is provided by our staff and other contributors, some of whom use anonymous screen names and are people not otherwise connected with MP3tunes. You acknowledge that a large volume of information may be available in our Forums and that people participating in such Forums occasionally post messages or make statements, whether intentionally or unintentionally, that are inaccurate, misleading or deceptive. We neither endorse nor are responsible for such messages or statements, or for any opinion, advice, information or other utterance made or displayed on the Site or Forums by third parties, whether such third parties are visitors to the Site, members of the MP3tunes community or others. The opinions expressed in the Forums reflect solely the opinion(s) of the participant(s) and may not reflect the opinion(s) of MP3tunes. We are not responsible for any errors or omissions in articles or postings, for hyperlinks embedded in messages or for any results obtained from the use of such information. Under no circumstances will we, our suppliers or agents be liable for any loss or damage caused by your reliance on such information obtained through the Site.

We have no obligation to monitor the Site or the Forums, or any Submissions or other materials that you or other third parties transmit or post on the Site or the Forums. You acknowledge and agree that we have the right (but not the obligation) to monitor the Site and the Forums and the materials you transmit or post, to alter or remove any such materials (including, without limitation, any posting to a Forum); to disclose such materials and the circumstances surrounding their transmission to any third party in order to operate the Site properly; to protect ourselves, our sponsors and our members and visitors; and to comply with legal obligations or governmental requests.

**Links.** The Site contains links to other Internet web sites which may or may not be owned or operated by MP3tunes. MP3tunes has not reviewed all of the web sites that are linked to the Site, and MP3tunes has no control over such sites. Unless otherwise explicitly stated, MP3tunes is not responsible for the content of such web sites, any updates or changes to such sites, or the privacy or other practices of such sites, and the fact that MP3tunes offers such links does not indicate any approval or endorsement of any material contained on any linked site. MP3tunes is providing these links to you only as a convenience. Accordingly, we strongly encourage you to become familiar with the terms of use and practices of any linked site. Further, it is up to you to take precautions to ensure that whatever links you select or software you download (whether from the Site or other sites) is free of such items as viruses, worms, Trojan horses, defects, data bombs, time bombs and other items of a destructive nature.

**Claims of Copyright Infringement.** MP3tunes respects the intellectual property of others, and we ask our users to do the same. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that materials hosted by MP3tunes infringe your copyright (for example, materials stored by MP3tunes for a subscriber or on one of our Forums), you (or your agent) may send us a notice requesting that the material be removed, or access to it blocked. The notice must include the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed (or if multiple copyrighted works located on the Site are covered by a single notification, a representative list of such works); (c) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to allow MP3tunes to locate the material on the Site; (d) the name, address, telephone number and email address (if available) of the complaining party; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed by MP3tunes against you, the DMCA permits you to send MP3tunes a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA; see <http://www.uscopyright.gov/dmca/> for details. Notices and counter-notices with respect to the Site should be sent to MP3tunes, LLC, 5960 Cornerstone Court, First Floor, San Diego, CA 92121, Attn: Emily Richards. We suggest that you

consult your legal advisor before filing a notice or counter-notice. Also, be aware that there can be penalties for false claims under the DMCA.

Under the appropriate circumstances, it is MP3Tunes's policy to remove and/or to disable access from MP3Tunes to web pages of repeat infringers, to terminate subscribers and account holders who are repeat infringers, and to remove and/or to disable access from MP3Tunes to web pages as to which there have been steps taken for the purpose of effecting MP3Tunes's search results such as ending inappropriate "meta-tags."

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**Indemnification.** You agree to indemnify, defend and hold MP3tunes, our affiliates, licensors, suppliers, advertisers and sponsors, and our and their directors, officers, employees, consultants, agents and other representatives, harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees) and other expenses that arise directly or indirectly out of or from (a) your breach of this Agreement or any End User License Agreements you have agreed to, including any violation of the Code of Conduct, above; (b) any allegation that any Submissions or other materials you submit to us or transmit to the Site infringe or otherwise violate the copyright, trademark, trade secret or other intellectual property or other rights of any third party; and/or (c) your activities in connection with the Site.

**Questions.** The Site is provided by MP3tunes, LLC. If you have any questions, comments or complaints regarding this Agreement or the Site, feel free to contact us at MP3tunes, LLC, 5960 Cornerstone Court West, First Floor, San Diego, CA 92121, (866) 202-1600 or <http://www.mp3tunes.com/contact>.

**Notice for California Users.** Under California Civil Code Section 1789.3, California Site users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 400 R Street, Suite 1080, Sacramento, California 95814, or by telephone at (916) 445-1254 or (800) 952-5210.

**Miscellaneous.** This Agreement is governed by and construed in accordance with the laws of the State of California, United States of America, without regard to its principles of conflicts of law. You agree to submit to the exclusive jurisdiction of any State or Federal court located in the County of San Diego, California, United States of America, and waive any jurisdictional, venue or inconvenient forum objections to such courts. If any provision of this Agreement is found to be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions. This is the entire Agreement between us relating to the subject matter herein and supersedes any and all prior or contemporaneous written or oral Agreements between us with respect to such subject matter. This Agreement is not assignable, transferable or subleaseable by you except with MP3tunes's prior written consent. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained in this Agreement is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof.

Please read the MP3tunes Privacy Policy.

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TERMS AND CONDITIONS | PRIVACY POLICY | JOBS

EXHIBIT B

## JENNER &amp; BLOCK

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 sfehrlitz@jenner.com

VIA OVERNIGHT MAIL

September 4, 2007

MP3Tunes, LLC  
 5960 Cornerstone Court  
 First Floor  
 San Diego, CA 92121

Attn: Emily Richards

Re: *EMI Music Group/Infringement of Copyrighted Works*

Dear Ms. Richards:

We are counsel for EMI Music Group North America, whose record labels include (but are not limited to) Capitol, Priority, Blue Note, EMI, Virgin, and Astralwerks (collectively, "EMI"). EMI is the owner of copyright, exclusive rights under copyright or related common law and statutory rights, in sound recordings. Among the recordings whose rights are owned by EMI are some of the most popular recordings in the world, including recordings by the Beatles, the Beastie Boys, the Beach Boys, Coldplay, David Bowie, Norah Jones, Lenny Kravitz, Radiohead, the Red Hot Chili Peppers, Tina Turner, and many others.

MP3Tunes, through its websites, MP3Tunes.com and Sideload.com, and its "Obao Software Suite" (collectively, "MP3Tunes"), among other things, is copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of our client's copyrighted recordings in violation of the Copyright Act. For example, MP3Tunes.com provides (based on a user's search query) URL links to "source sites" that host unauthorized music files. Through the "Obao Software Suite" and the "Obao Sideload Plug-in," which MP3Tunes provides for no charge at MP3Tunes.com and Sideload.com, MP3Tunes' users can click a button MP3Tunes presents beside every link; when they do so, MP3Tunes automatically and instantly copies and "sideloads" the selected music from the source site into the user's Obao locker on the MP3Tunes.com website (which offers free storage and indexing of the user's "sideloaded" files). Thus, MP3Tunes unlawfully copies, and enables and induces its users to unlawfully copy, countless audio recordings of EMI artists, such as Coldplay's "Clocks" or Radiohead's "Karma Police." All of these unauthorized music files are available for download or immediate playback via the MP3Tunes.com website's proprietary integrated online audio player, and can be further transferred to most portable music devices, or copied to a compact disc. Searches using the names of virtually every other EMI artist returned similar results. However, EMI has not authorized any of its recordings to be copied, distributed, or performed in this manner on or by MP3Tunes or its users.



Amaly Richards  
 September 4, 2007  
 Page 2

As we are certain that you are aware, the foregoing conduct constitutes copyright infringement under the United States Copyright Act and under laws of other countries, international law, and/or international treaty obligations. For a variety of reasons, MP3Tunes is not protected by any of the "safe-harbors" of the Digital Millennium Copyright Act ("DMCA").

Without waiver of the foregoing position and without conceding that MP3Tunes is entitled to any of the protections of the DMCA, including that it is a "Service Provider," fails within any of the enumerated categories of Section 512(a)-(d), or has effectively complied with any of the requirements contained therein, we are enclosing herewith a CD-ROM containing a spreadsheet identifying, by artist, song title and URL location, a representative sample, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), of EMI's copyrighted works that are copied, performed, stored, distributed, and made available for download on or by MP3Tunes. We demand that MP3Tunes immediately take the following actions with respect to each work identified in the attached spreadsheet: (1) remove or disable access to the work; (2) notify the MP3Tunes end user or uploader of the infringement(s); and (3) take appropriate action against the account holder pursuant to the MP3Tunes Terms of Use and End User Agreement. Please confirm in writing that you have done so. Additionally, please provide us with a complete accounting of all of the identified BMI recordings that have been copied, performed or distributed by MP3Tunes including the number of times each recording has been accessed by MP3Tunes users.

The enclosed representative list reflects only a small portion of the total number of infringing EMI works contained on MP3Tunes. Our initial investigation suggests that hundreds, if not thousands, of additional copies of BMI's copyrighted works are being made available on or by MP3Tunes, with more being copied and made available daily. Accordingly, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), based on EMI's representative list, MP3Tunes is obligated to remove all of EMI's copyrighted works, even those not specifically identified on the attached. A non-exhaustive further listing of BMI's recording artists can be found at <http://www.emigoop.com/About/Music/Default.htm>. In addition to the foregoing, we demand that MP3Tunes immediately take any and all appropriate action to ensure that each and every one of the works identified in the attached spreadsheet, and all other BMI copyrighted recordings, remain unavailable on or through MP3Tunes.

The information in this notification is accurate and we have a good faith belief that use of the material in the manner complained of is not authorized by EMI, its respective agents, or the law. I further hereby state, under penalty of perjury, that we are authorized to act on behalf of EMI as set forth in this letter.

Emily Richards  
September 4, 2007  
Page 3

Your immediate attention to this letter is required. Nothing herein is intended to or shall be construed as a waiver of any of BMI's rights and remedies, all of which hereby are expressly reserved.

Very truly yours,

  
Steven B. Fabrizio

Enclosure

cc: Alasdair McMillan, Esq.  
Scott Schreiber, Esq.  
BMI Music North America

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EXHIBIT C

# DREIER<sup>LLP</sup>

ATTORNEYS AT LAW

The Garsky Group

Ira S. Sacks, Partner  
Direct 212 652 3730  
isacks@dreierllp.com

September 13, 2007

VIA FEDERAL EXPRESS

Steven B. Fabrizio, Esq.  
Jenner & Block LLP  
601 Thirteenth Street, NW  
Suite 1200 South  
Washington, DC 20005-3823

Re: MP3tunes, LLC

Dear Mr. Fabrizio,

We represent MP3tunes, LLC ("MP3tunes"). We write in response to your cease-and-desist letter, dated September 4, 2007 to MP3tunes, regarding your allegations that MP3tunes, through its websites, MP3tunes.com and Sideload.com, and its "Oboe Software Suite" is "copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of [your] client's copyrighted recordings in violation of the Copyright Act."

While we find your allegations baseless and believe that you failed to comply with the requirements of the Digital Millennium Copyright Act ("DMCA") when notifying our client of its alleged infringement, in an effort to resolve this matter and to fulfill our obligations under the DMCA, MP3tunes has removed the approximately 350 songs you provided with your cease-and-desist letter from availability for sideloading. If you provide another list with additional songs to which EMI and/or its affiliates represent they own the copyrights, MP3tunes will promptly remove those songs from availability for sideloading as well.

EMI needs to understand the function of MP3tunes and sideload.com. MP3tunes plays no role in what songs are designated for sideload.com by users of MP3tunes. None of the songs designated by users for sideloading are physically available on sideload.com. Rather, what is provided is a hyperlink.

Notwithstanding MP3tunes' continued willingness to resolve this matter amicably, your attempt to place the burden on MP3tunes to determine which of the songs on its website

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Steven B. Fabrizio, Esq.  
 September 13, 2007  
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are infringing simply by providing (i) a link to the EMI website which provides a "non-exhaustive further listing of EMI's recording artists" and (ii) a representative list of songs which you demand be disabled, fails to comply with EMI's obligations under the DMCA. What is more, having quickly analyzed the list of songs that you attached to your letter, we believe that your assertion that "EMI has not authorized any of its recordings to be copied, distributed or performed" as is done on sideload.com and that "EMI has a good faith belief that use of the material in the manner complained of is not authorized by EMI, its respective agents or the law" is factually incorrect.

First, your notice is inadequate under the DMCA. Specifically, as you know, the 17 U.S.C. § 512(c)(3)(A) provides that:

To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Steven B. Fabrizio, Esq.  
September 13, 2007  
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Thus, while you correctly supplied a representative list of multiple copyrighted works located on a single site in your notification as per 17 U.S.C. § 512(c)(3)(A)(ii), you still must comply with the requirements of § 512(c)(3)(A)(iii) – that is, you must specifically identify the material that is to be removed or access to which is to be disabled. A representative list such as the one you have provided is insufficient to comply with 17 U.S.C. § 512(c)(3)(A)(iii).

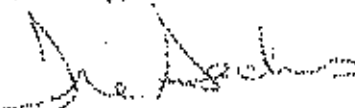
Moreover, we believe that some of the artists on your list and/or on your website are no longer represented by EMI; and that some songs you listed are freely available for digital download. For example, the first band that is listed in your spreadsheet is "Air". MP3tunes features an "Air" track -- "Once Upon A Time" -- on the first page of [sideload.com](http://sideload.com). That track is from the popular online music magazine, *Filter*, and is accessed by the URL <http://filter-mag.com/index.php?id=13977&c=6>. We have no reason to believe that the Filter track is anything but lawful.

Similarly, your list also includes the track "Nobody Move, Nobody Get Hurt" by the band "We Are Scientists" from the URL [http://media.spin.com/features/band\\_of\\_the\\_day/audio/2005/11/nobody\\_move\\_nobody\\_get\\_hurt\\_hi.mp3](http://media.spin.com/features/band_of_the_day/audio/2005/11/nobody_move_nobody_get_hurt_hi.mp3). *Spin* is a popular online music magazine. All the labels distribute MP3s promotionally. We believe that it is likely that this track is such a promotional distribution and is lawfully available. The same is true for the tracks that you list from the *Paste Store*, which is a store which often distributes promotional tracks provided to them.

Nonetheless, as previously stated, if you send us a list of additional tracks to which EMI and its affiliates own the copyrights, provide information reasonably sufficient to permit our client to locate the material, and accurately represent that the listed tracks are not legally digitally available for copying (along with the remaining required elements of 17 U.S.C. § 512(c)(3)(A)), MP3tunes will disable those songs from sideloading as well.

Please feel free to contact me if you would like to discuss this matter further. This letter is written without prejudice to the rights, claims and/or defenses of MP3tunes or its affiliates, all of which are hereby expressly reserved.

Sincerely,



Ira S. Sacks

ISS/es  
cc: Michael Robertson (via email)

## EXHIBIT D



JENNER & BLOCK

September 13, 2007

VIA ELECTRONIC MAIL  
AND U.S. MAIL

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Steven H. Fabrizio  
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sfabrizio@jennerblock.com

Re: *MP3tunes Infringement of EMI Works*

Dear Ira:

Thank you for your letter of September 13, 2007. It is not our intention to engage in an extended exchange of letters. However, because your client appears to fundamentally misunderstand the DMCA, in an effort to avoid litigation born of misunderstanding, we offer the four observations set forth below. Beyond that, we invite MP3tunes to make a substantive proposal both to redress past infringement of EMI works and to ensure that there will be no future infringement of EMI works. When Michael Robertson and I spoke last week, it was my impression that MP3tunes would be making such a proposal. If MP3tunes does not intend to make a meaningful proposal to resolve this matter, kindly let us know and we will proceed accordingly.

As for the substance of your September 13 letter:

o First, respectfully, you are simply wrong in your interpretation of the DMCA. While you correctly recite the text of § 512(c)(3), you completely ignore § 512(d), which addresses information location tools. To the extent MP3tunes can take advantage of the DMCA at all, it must respond to notices compliant under § 512(d). As you undoubtedly know, § 512(d)(3) expressly modifies § 512(c)(3)(A)(iii) on the very issue of alleged non-compliance you raise in your letter. In relevant part, § 512(d)(3) provides that for purposes of § 512(d):

the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

17 U.S.C. § 512(d)(3) (emphasis added); see also S.R. Rep. No. 105-190, at 47-48 (1998) ("The reference to 'infringing activity' is intended to refer to wrongful activity that is occurring at the

Mr. S. Spector, Esq.  
September 18, 2007  
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location to which the link or reference refers ... [and] the information submitted by the complaining party under subsection (c)(3)(A)(ii) is identification of the reference or link to infringing material or activity"). Accordingly, our notice is absolutely compliant with the DMCA in all respects.

Second, we agree with the acknowledgment in your September 13 letter, at page 3, that we have "correctly supplied a representative list of multiple copyrighted works located on a single site in [our] notification as per 17 U.S.C. § 512(c)(4)(B)." MP3tuner, however, does not appear to grasp the legal implications of that. The DMCA does not provide "safe harbor" just because a service provider responds to a notification by blocking access to the specifically identified works on a representative list. The statutory text and the legislative history make crystal clear that, once a copyright holder has provided a compliant "representative list" of its works, the obligation shifts to the service provider to remove or disable access to all copyrighted works owned by that copyright holder. The pertinent legislative history is as follows:

Where multiple works at a single online site are covered by a single notification, a representative list of such works at that site is sufficient. Thus, where a party is operating an unauthorized Internet jukebox from a particular site, it is not necessary for a compliant notification to list every musical composition or sound recording that has been or could be infringed at that site, so long as a representative list of those compositions or recordings is provided so that the service provider can understand the nature and scope of the infringement being claimed.

S.R. Rep. No. 105-190, at 46 (emphasis added); H.R. Rep. No. 105-551, at 55 (1998) (same); see also, e.g., *ALI Scan, Inc. v. Romany Communities, Inc.*, 239 F.3d 619, 625 (4th Cir. 2001) (DMCA safe harbor "is not presumptive, but granted only to 'innocent' service providers who can prove they do not have actual or constructive knowledge of the infringement"; eligibility for safe harbor "disappears at the moment the service provider loses its innocence, i.e., at the moment it becomes aware that a third party is using its system to infringe"). Therefore, MP3tuner's commitment to remove the specific links identified on our representative list is not an act of compliance, but rather an acknowledgment of non-compliance. EMI has provided more than sufficient notice such that MP3tuner can understand the nature and scope of the infringement being claimed. If MP3tuner wants any argument as to compliance with § 512(c)(3), it must act accordingly. As observed below, it has not.

Third, as of this morning, countless EMI works, including works that were identified in our notice, and the works of EMI artists who were identified in the notice, continue to be infringed by and through MP3tuner. MP3tuner is liable for each of these infringements.

Fourth, many in your client's position conveniently view the DMCA as providing safe harbor as long as copyright infringement notices are appropriately responded to. That is not correct. Whether or not notices are sent to or responded to by a service provider, the DMCA

Lee S. Sachs, Esq.  
September 18, 2007  
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disqualifies a service provider from all safe harbor if that service provider either: (i) has "actual knowledge that the material or activity is infringing," 17 U.S.C. § 512(d)(1)(A); or (ii) is "aware of facts or circumstances from which infringing activity is apparent," 17 U.S.C. § 512(d)(1)(B); or (iii) "receiv[es] a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity," 17 U.S.C. § 512(d)(2). Separate and apart from its failure to comply with EMI's notice, MP3tunes would be disqualified from DMCA safe harbor based on each of these provisions. Moreover, in addition to EMI works that are protected under the federal copyright laws, MP3tunes infringes and is responsible for the infringement of innumerable EMI works that were first fixed prior to February 1972 ("pre-72 works") and which are protected under state law. *E.g., Capitol Records, Inc. v. Naxos of America, Inc.*, 4 N.Y.3d 540, 850 N.E.2d 250 (N.Y. 2005). As the DMCA is a provision of the United States Copyright Act, it provides no conceivable protection for MP3tunes' infringement of EMI's pre-72 works.

"The complex marvels of cyberspatial communications may create difficult legal issues; but not in this case." *UAG Recordings, Inc. v. MP3.com, Inc.*, 92 F. Supp. 2d 349, 350 (S.D.N.Y. 2000) (Rakoff, J.). Judge Rakoff's comment is equally applicable here. MP3tunes is building a business by leveraging the popularity of creative works that MP3tunes did not create and does not own. It will be held liable for copyright infringement under federal and state laws.

If MP3tunes has made an informed decision to litigate the issue of its copyright liability, so be it. If, on the other hand, MP3tunes has a meaningful proposal to make for an overall resolution, the time to make it is now.

Finally, EMI is compelled to expressly reserve all of its rights with respect to the conflict of interest your firm, Dreier LLP, has in representing MP3tunes in a matter adverse to EMI. Dreier LLP currently is representing EMI's affiliate, Caroline Records, Inc., in a ongoing litigation in the New York State Supreme Court captioned *Caroline Records v. Jeter*. The rules of professional conduct governing lawyers practicing in New York prohibit Dreier LLP from acting adverse to its EMI client absent receiving an express waiver from EMI, which Dreier LLP has neither sought nor received.

Yours truly,

  
Steven B. Fabrizio

cc: Alasdair McMillan, Esq.  
Scott Schreiber, Esq.  
EMI Music North America

Andrew H. Bart, Esq.  
Thomas J. Perrelli, Esq.  
Janmar & Black LLP

EXHIBIT E



JENNER & BLOCK

October 25, 2007

BY OVERNIGHT DELIVERY

Ms. Emily Richards  
MP3Tunes, LLC  
5960 Cornerstone Court, First  
Floor  
San Diego, CA 92121

Jenner & Block LLP  
919 Third Avenue  
17th Floor  
New York, NY 10022  
Tel 212-697-1600  
www.jenblock.com

Chicago  
Dallas  
New York  
Washington

Andrew J. Bari  
abari@jenner.com

Re: *EMI Records / Infringement of Copyrighted Works*

Dear Ms. Richards:

We are counsel for EMI Music Group North America, whose record labels include (but are not limited to) Capitol, Priority, Blue Note, EMI, Virgin, Astralwerks (collectively, "EMI"). EMI is the owner of copyright, exclusive rights under copyright, or related common law and statutory rights, in sound recordings. Among EMI's copyrights are works of some of the world's most popular artists, including The Beatles, David Bowie, Coldplay, and many others.

MP3Tunes, through its websites, MP3Tunes.com and Sideload.com, and its "Oboe Software Suite" (collectively, "MP3Tunes"), among other things, is copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of our client's copyrighted works in violation of the Copyright Act. For example, MP3Tunes.com provides (based on a user's search query) URL links to "source sites" that host unauthorized music files. Through the "Oboe Software Suite" and the "Oboe Sideload Plug-in," which MP3Tunes provides for no charge at MP3Tunes.com and Sideload.com, MP3Tunes' users can click a button MP3Tunes presents beside every link; when they do so, MP3Tunes automatically and instantly copies and "sideloads" the selected music from the source site into the user's Oboe locker on the MP3Tunes.com website (which offers free storage and indexing of the user's "sideloaded" files). Thus, MP3Tunes unlawfully copies, and enables and induces its users to unlawfully copy, countless works by EMI artists. All of these unauthorized music files are available for download or immediate playback via the MP3Tunes.com website's proprietary integrated online audio player, and can be further transferred to most portable music devices, or copied to a compact disc. Searches using recordings by other EMI artists returned similar results. However, EMI has not authorized any of its works to be copied, distributed, or performed in this manner on or by MP3Tunes or its users.

As we are certain that you are aware, the foregoing conduct constitutes copyright infringement under the United States Copyright Act and under laws of other countries, international law, and/or international treaty obligations. For a variety of reasons, MP3Tunes is not protected by any of the "safe-harbors" of the Digital Millennium Copyright Act ("DMCA").

Ms. Emily Richards  
 October 25, 2007  
 Page 2

international law, and/or international treaty obligations. For a variety of reasons, MP3Tunes is not protected by any of the "safe-harbors" of the Digital Millennium Copyright Act ("DMCA").

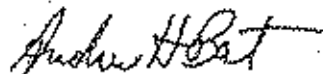
Without waiver of the foregoing position and without conceding that MP3Tunes is entitled to any of the protections of the DMCA, including that it is a "Service Provider," falls within any of the enumerated categories of Section 512(a)-(d), or has effectively complied with any of the requirements contained therein, we are enclosing herewith a CD-ROM containing a spreadsheet identifying, by artist, song title and — consistent with 17 U.S.C. § 512(b) — URL location, a representative sample, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), of EMI Publishing's copyrighted works that are copied, performed, stored, distributed, and made available for download on or by MP3Tunes. We demand that MP3Tunes immediately take the following actions with respect to each work identified in the attached spreadsheet: (1) remove or disable access to the work; (2) notify the MP3Tunes end user or uploader of the infringement(s); and (3) take appropriate action against the account holder pursuant to the MP3Tunes Terms of Use and End User Agreement. Please confirm in writing that you have done so. Additionally, please provide us with a complete accounting of all of the identified EMI Publishing works that have been copied, performed or distributed by MP3Tunes including the number of times each work has been accessed by MP3Tunes users.

The enclosed representative list reflects only a small portion of the total number of infringing EMI Publishing works contained on MP3Tunes. Our initial investigation suggests that hundreds, if not thousands, of additional copies of EMI Publishing's copyrighted works are being made available on or by MP3Tunes, with more being copied and made available daily. Accordingly, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), based on the representative list we are providing, MP3Tunes is obligated to remove all of EMI Publishing's copyrighted works, even those not specifically identified on the attached. See S. Rep. No. 105-190, at 46 (1998) (requiring operator of site to take action upon being provided with a "representative list" sufficient for the operator to "understand the nature and scope of the infringement being claimed"). A non-exhaustive further listing of songwriters whose works are owned by EMI Publishing can be found at <http://www.emigroup.com/About/Music/EMI+Music+Publishing+songwriters.htm>. In addition to the foregoing, we demand that MP3Tunes immediately take any and all appropriate action to ensure that each and every one of the works identified in the attached spreadsheet, and all other EMI Publishing copyrighted works, remain unavailable on or through MP3Tunes.

The information in this notification is accurate and we have a good faith belief that use of the material in the manner complained of is not authorized by EMI Publishing, its respective agents, or the law. I further hereby state, under penalty of perjury, that we are authorized to act on behalf of EMI Publishing as set forth in this letter.

Ms. Emily Richards  
October 25, 2007  
Page 3

Very truly yours,

A handwritten signature in cursive script, appearing to read "Andrew H. Bart".

Andrew H. Bart

Enclosure

cc: Michael Abitbol, *EMI Entertainment World, Inc.*

JENNER & BLOCK

October 25, 2007

BY OVERNIGHT DELIVERY

Ms. Emily Richards  
MP3Tunes, LLC  
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Jenner & Block LLP  
919 Third Avenue  
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New York, NY 10022  
Tel: 212-891-5600  
www.jenblock.com

Andrew H. Best  
abest@jenner.com

Re: *EMI Entertainment World / Infringement of Copyrighted Works*

Dear Ms. Richards:

We are counsel for EMI Entertainment World, Inc. ("EMI Publishing"), a division of EMI Group and one of the world's leading music publishers. EMI Publishing is the owner of copyright, exclusive rights under copyright, or related common law and statutory rights, in musical compositions. Among the over one million compositions owned or controlled by EMI Publishing are some of the most popular songs of the past and the present, including "Over the Rainbow," "Higher Ground," "Start Me Up," "Come As You Are," "I Bet You Look Good on the Dancefloor" and many others.

MP3Tunes, through its websites, MP3Tunes.com and Sideload.com, and its "Oboe Software Suite" (collectively, "MP3Tunes"), among other things, is copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of our client's copyrighted works in violation of the Copyright Act. For example, MP3Tunes.com provides (based on a user's search query) URL links to "source sites" that host unauthorized music files. Through the "Oboe Software Suite" and the "Oboe Sideload Plug-in," which MP3Tunes provides for no charge at MP3Tunes.com and Sideload.com, MP3Tunes users can click a button MP3Tunes presents beside every link; when they do so, MP3Tunes automatically and instantly copies and "sideloads" the selected music from the source site into the user's Oboe locker on the MP3Tunes.com website (which offers free storage and indexing of the user's "sideloaded" files). Thus, MP3Tunes unlawfully copies, and enables and induces its users to unlawfully copy, countless works owned by EMI Publishing, such as "If I Ain't Got U" and "Janie's Got A Gun." All of these unauthorized music files are available for download or immediate playback via the MP3Tunes.com website's proprietary integrated online audio player, and can be further transferred to most portable music devices, or copied to a compact disc. Searches using songs by other EMI Publishing songwriters returned similar results. However, EMI Publishing has not authorized any of its works to be copied, distributed, or performed in this manner on or by MP3Tunes or its users.

As we are certain that you are aware, the foregoing conduct constitutes copyright infringement under the United States Copyright Act and under laws of other countries.



Ms. Emily Richards  
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Without waiver of the foregoing position and without conceding that MP3Tunes is entitled to any of the protections of the DMCA, including that it is a "Service Provider," falls within any of the enumerated categories of Section 512(a)-(d), or has effectively complied with any of the requirements contained therein, we are enclosing herewith a CD-ROM containing a spreadsheet identifying, by artist, song title and - consistent with 17 U.S.C. § 512(d) - URL location, a representative sample, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), of EMI's copyrighted works that are copied, performed, stored, distributed, and made available for download on or by MP3Tunes. We demand that MP3Tunes immediately take the following actions with respect to each work identified in the attached spreadsheet: (1) remove or disable access to the work; (2) notify the MP3Tunes end user or uploader of the infringement(s); and (3) take appropriate action against the account holder pursuant to the MP3Tunes Terms of Use and End User Agreement. Please confirm in writing that you have done so. Additionally, please provide us with a complete accounting of all of the identified EMI works that have been copied, performed or distributed by MP3Tunes including the number of times each work has been accessed by MP3Tunes users.

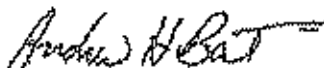
The enclosed representative list reflects only a small portion of the total number of infringing EMI works contained on MP3Tunes. Our initial investigation suggests that hundreds, if not thousands, of additional copies of EMI's copyrighted works are being made available on or by MP3Tunes, with more being copied and made available daily. Accordingly, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), based on the representative list we are providing, MP3Tunes is obligated to remove all of EMI's copyrighted works, even those not specifically identified on the attached. See S. Rep. No. 105-190, at 46 (1998) (requiring operator of site to take action upon being provided with a "representative list" sufficient for the operator to "understand the nature and scope of the infringement being claimed"). Non-exhaustive further listings of artists whose works are owned by EMI can be found at <http://www.capitolrecords.com/artists/>, <http://www.virginrecords.com/home/artists.html>, <http://www.bluenote.com/artists.asp>, [http://www.narada.com/artist\\_page.htm](http://www.narada.com/artist_page.htm), and <http://www.astralwerks.com/>. In addition to the foregoing, we demand that MP3Tunes immediately take any and all appropriate action to ensure that each and every one of the works identified in the attached spreadsheet, and all other EMI copyrighted works, remain unavailable on or through MP3Tunes.

EMI further notes that MP3Tunes infringes and is responsible for the infringement of EMI works that were first fixed prior to February 1972 ("pre-72 works") and which are protected under state law. *E.g., Capitol Records, Inc. v. Maxco of America, Inc.*, 830 N.E.2d 250 (N.Y. 2005). As the DMCA is a provision of the United States Copyright Act, it provides no protection for MP3Tunes' infringement of EMI's pre-72 works.

The information in this notification is accurate and we have a good faith belief that use of the material in the manner complained of is not authorized by EMI, its respective agents, or the law. I further hereby state, under penalty of perjury, that we are authorized to act on behalf of EMI as set forth in this letter.

Ms. Emily Richards  
October 25, 2007  
Page 3

Very truly yours,

A handwritten signature in dark ink, appearing to read "Andrew H. Bart". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrew H. Bart

Enclosure

cc: Alasdair McMullan, Esq., *EMI Music North America*  
Scott Schreiber, Esq., *EMI Music North America*